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INDIANA STATE DEPARTMENT OF HEALTH
PUBLIC HEARING, CAUSE NO. 03-04

IN THE MATTER OF]
PROPOSED RULE, LSA DOCUMENT #02-321]
]

TRANSCRIPT OF PROCEEDINGS AT HEARING
Held at Rice Auditorium, 2 North Meridian Street
Indianapolis, Indiana
At 1:00 p.m. on July 1, 2003
Before the
HONORABLE JAN BERG, HEARING OFFICER

ACCURATE REPORTING OF INDIANA
12922 Brighton Avenue
Carmel IN 46032

1 [July 1, 2003. 1:05 p.m.]

2 MS BERG: We are going to get started now.

3 This is a public hearing before the Indiana State
4 Department of Health, on the first day of July, 2003, at
5 one o'clock p.m., at the State Department of Health in
6 Rice Auditorium, located at 2 North Meridian Street,
7 Indianapolis, Indiana.

8 This case is docketed before the Executive Board of
9 the Indiana State Department of Health as cause number
10 03-04, a rule to establish the requirements pertaining to
11 the disposition of excremental and sewage matters through
12 the design, installation, construction, maintenance, and
13 operation of commercial facilities, residential, cluster,
14 and experimental and alternative technology on-site
15 sewage systems.

16 Notice of time and place of this hearing was given
17 as provided by law, by publishing on May 30, 2003 in the
18 Indianapolis Star, and by publishing in the Indiana
19 Register dated June 1st, 2003.

20 Proof of publication of this notice has been
21 received by the Indiana State Department of Health, and
22 the notice and proof are now incorporated in the record
23 of this cause by reference, and placed in the official
24 files of the Department.

25 May name is Jan Berg; it's B-E-R-G. I have been

1 appointed hearing officer to serve in this cause.

2 The sign-in sheet at the back of the room shall be
3 completed by all individuals desiring to be shown as
4 appearing of record, and shall be completed by those who
5 desire to be heard during the hearing. If you have not
6 already signed the sheet, please do so at this time.

7 Oral statements will be heard, and written
8 statements may be handed to me today or mailed to my
9 office, at 1010 North High School Road, Indianapolis,
10 Indiana 46224 by--I would like written statements by
11 August 13th, 2003.

12 I should also note at this time that there will be
13 two other public hearings on this issue. The next
14 hearing will be held July 30, 2003, at 11:00 a.m. in the
15 LaPorte County Annex and Security Center, Commissioners'
16 Meeting Room, 809 State Street, LaPorte, Indiana. The
17 third hearing will be held August 6, 2003, at 10:00 a.m.
18 in Seymour High School auditorium, 1350 West 2nd Street,
19 Seymour, Indiana.

20 All written and verbal comments will be reported in
21 my report on this hearing to the Executive Board of the
22 Indiana State Department of Health. And these comments
23 should be addressed to the board today. My job is solely
24 to report your comments to the Board; I do not make a
25 recommendation or have any influence on their decision.

1 Each person who speaks for the record is requested
2 to stand at the lectern here to my right to speak. Also,
3 please clearly identify yourself by giving your name,
4 spelling it, and identifying who you represent. We will
5 also limit comments initially in this today to ten
6 minutes per person. If we have additional time after
7 everyone has gone, you may speak some more if you have
8 additional comments you would like to make.

9 Will the official reporter designated for this
10 hearing please raise your right hand and state your name?

11 THE REPORTER: My name is David Oesterreich.

12 [The reporter was sworn.]

13 MS BERG: Okay, I have been handed the list of
14 people who wish to speak today, and I am just going to go
15 down the list. And if you've changed your mind you don't
16 need to get up here.

17 David Kovich. Did I pronounce that right?

18 MR. KOVICH: First of all, let me introduce
19 myself. I am David Kovich, K-O-V-I-C-H, from Lafayette,
20 Indiana. I have the pleasure of serving the fifty-six
21 hundred members of the Indiana Builders Association as
22 their state president. My job is to preview upcoming
23 rules and to make sure that they keep housing affordable
24 to the people of Indiana. It is-- IBA is here today to
25 tell you about Rule 410 IAC 6-8.2, which we see as not

1 being practical, affordable, scientifically based, or
2 backed by our development and building community.

3 The new rule falls short of being a positive benefit
4 for the people of the building industry for the State of
5 Indiana. In 1991 Rule 6-8.1 had a similar start, in the
6 late 1980s. But after a year of sitting down with the
7 Builder's Association and the State Board of Health a
8 rule was formed that has been for the last ten to twelve
9 years functioning through the state. Changes need to be
10 made on this rule, but not the drastic changes that we
11 see in the new rule that is proposed here today.

12 The existing rule has been studied by Purdue
13 University, in the counties of Elkhart and Tippecanoe
14 County, with favorable results of somewhere between two
15 and four percent failure rate. That is a rate that is
16 very reasonable, and something that should not just be
17 changed because a new rule has been asked to be
18 implemented. Sure, 6-8.1 needs to be updated, but not
19 radically making the changes that threaten housing
20 affordability.

21 I ask the Commission to listen to the people that
22 will speak here today. IBA agrees that some changes need
23 to be made, but it cannot be at the expense of an
24 industry that has held the Indiana economy together over
25 at last two years, and the people of Indiana who are

1 close to the top in the state housing affordability and
2 the U.S. housing affordability and home ownership.

3 Lastly, I submit general and line-item proposed
4 septic issues to the Commission.

5 [Mr. Kovich handed documents to the Hearing
6 Officer.]

7 MS BERG: Thank you very much.

8 Marlys Pedtke?

9 MS PEDTKE: Thank you.

10 My name is Marlys Pedtke, P-E-D-T-K-E.
11 M-A-R-L-Y-S--told my mom that would be a problem.

12 I am a technical staff person for the Indiana
13 Builders Association. We have a member who is a person
14 on our septic subcommittee who is going to be making our
15 main presentation today, and I am here in opposition to
16 the rule and in support of the IBA position, and I will
17 come back and speak later in the hearing if I feel that
18 we need to make a point clearer or if someone says
19 something that we feel IBA needs to rebut.

20 Thank you.

21 MS BERG: Thank you.

22 I guess she's really pointed out a problem: If the
23 point you wish to make today has already been raised by
24 someone and I call your name, don't feel free to
25 come--don't feel like you have to come up here and say

1 something; just let me know.

2 Scott Hughey?

3 MR. HUGHEY: My name is Scott Hughey, and I am
4 with Carmel Concrete Products Company. We're a
5 manufacturer of septic tanks. We as a manufacturer have
6 some problems with the changes in the specifications.

7 There's a change in there requiring tanks to be
8 two-compartment tanks. This would be extremely
9 burdensome for a septic tank manufacturer. Ourselves
10 personally would have to discard all but one set of forms
11 that we have and purchase all new forms to meet this new
12 specification, which would be very burdensome, and I feel
13 it would be very burdensome for other manufacturers in
14 the state as well.

15 And my question to be, is, you know, what does the
16 State Board of Health see as a benefit that would
17 outweigh this economic burden on the manufacturers? You
18 know the economy is slow; it's-- Another gentleman
19 spoke, with the building association here, and we feel
20 that it would be undue cause of an increase in the cost
21 to manufacture a product, thereby adding more cost to the
22 cost of a home.

23 Also, as far as the drain holes in the tanks, my
24 thought, or our thoughts, were that we don't see why that
25 they couldn't allow us to use hydraulic cement to plug

1 the holes, the drain holes in the tank, versus the PVC.
2 It would be more labor-intensive to do the PVC, and more
3 costly. Possibility of paste getting into the threads
4 when you screw the plug in; it may not seal, be
5 watertight, even doing that.

6 Another question or--

7 MS BERG: May I interrupt you for just a
8 moment?

9 MR. HUGHEY: Sure.

10 MS BERG: Do you happen to have the portions
11 of the rule that--

12 MR. HUGHEY: Yes. Well, it's page-- I'll get
13 it. Hang on just a second.

14 It's page 37 of the specifications under septic
15 tanks, under general requirements, B-4 and 5.

16 Drain holes, on page 44, which is structural--
17 section 6, structural integrity of connectors, quality
18 control, product markings, standards for tank
19 installation. And it would come under A-3-- No, excuse
20 me. It comes under 4-- I am sorry, it is 5, drain holes
21 in precast concrete tanks. Stating it must use a female
22 threaded PVC opening and a--and then plugged using a male
23 thread PVC plug by the manufacturer before the tank is
24 delivered for use.

25 MS BERG: Thank you.

1 I'm sorry to interrupt you on that.

2 MR. HUGHEY: That's all right.

3 MS BERG: It's easier for me to let the Board
4 know which section you're addressing.

5 MR. HUGHEY: Sure.

6 And then the concern I had about page 50, which is
7 distribution of effluent, section 9, five--comes under
8 5-D point 2 A--talks about joint seal; it must be a
9 closed-cell neoprene gasket material to meet or exceed
10 the requirements of ASTM one oh five six, type 2(a),
11 standard specification for flexible cellular materials,
12 sponge or expanded rubber. And then applied according to
13 manufacturer's installation recommendations.

14 We don't see why you couldn't use a butyl mastic to
15 seal the lid to the box. It seems, with this material,
16 to me, that it wouldn't possibly--it possibly may not be
17 watertight, and you may have to have custom-made gaskets
18 for each size box, which would be very expensive, and I
19 think unnecessarily costly to the cost of a system. The
20 butyl mastic is used to seal the joints between tanks to
21 make them watertight. It's already available, and easily
22 can be placed around the box and pressed into place so
23 there is virtually no joint, and would easily make the
24 box watertight.

25 And then the fourth issue that we have is on page

1 43. I'm sorry, I don't have all these sections and
2 everything on here, but I will get it for you. Page 43,
3 under point D, marking of product.

4 I just wonder what the reasoning is behind marking D
5 boxes with the date of manufacture, the manufacturer's
6 name. Most of the systems that we sell--we sell tanks,
7 we sell the D boxes that go with them, and a D box is a
8 pretty small product, and to go to the trouble to paint
9 all those--that information on the box would be pretty
10 costly per unit price.

11 Those are the concerns that we have.

12 MS BERG: Okay. Thank you very much.

13 Ken Steury?

14 MR. STEURY: Good afternoon.

15 My name is Ken Steury; that's S-T-E-U-R-Y. And my
16 address is 11535 Leo Road, Fort Wayne Indiana. I am a
17 principal broker there of Leo Realtors. I am the current
18 secretary-treasurer of the Fort Wayne Area Association of
19 Realtors. I am here representing the Indiana Association
20 of Realtors as well as the Fort Wayne Area Association of
21 Realtors.

22 A significant part of the Fort Wayne Area
23 Association of Realtors' mission is to promote and
24 protect the individual's right to own, transfer, and use
25 real property. Therefore we are always very concerned

1 with legislation such as proposed rule 321, because it
2 can have a major impact on homeowners' ability to
3 continue owning and transferring and use of their real
4 property.

5 We understand and appreciate that a significant part
6 of the mission of IDEM and the Department of Health is to
7 protect public health. We support your mission, because
8 we certainly want to have a clean environment, including
9 clean water. Realizing that no-one wants to see
10 contaminated water that will harm human health or--we
11 come before you to ask that the rules put in place to
12 accomplish this mission be reasonable, affordable, and
13 expeditious in its implementation. And we come before
14 you to ask for your immediate and committed help to
15 resolve the myriad of problems associated with septic
16 systems throughout Indiana.

17 We do not believe that Indiana is alone in facing
18 these problems regarding water quality and septic
19 systems. There are many other states which face equal or
20 greater soil problems, such as those that persist in
21 Indiana counties. However we believe Indiana is trailing
22 in finding innovative and reasonable ways in which to
23 provide remedies to these challenges.

24 We believe this to be true for a couple of following
25 reasons: By requiring local sampling criteria versus

1 perhaps accepting established NSF research data when
2 allowing experimental alternative systems, septic
3 systems, to be sited, simply drives up the cost
4 significantly for manufacturers of these systems. As it
5 drives up the costs to the manufacturers, it obviously
6 drives up the costs to the homeowners. With this
7 requirement, manufacturers may reasonably prefer to
8 market in other states, that have more affordable or
9 reasonable or expeditious approach to these systems.

10 Currently in Allen County there are approximately a
11 hundred and sixty-three homeowners under pump-and-haul
12 orders, and many have been so for twelve months or
13 longer. They have been offered no other viable
14 alternatives, and thus they have been deprived of their
15 ability to use their real property at least in the way
16 that you and I do, such as taking daily showers or using
17 your dishwasher, or doing the laundry in your own home.
18 And most importantly, their ability to sell their home.

19 Many of these homeowners are paying hundreds of
20 dollars per month to pump and haul in addition to normal
21 costs incurred by other home owners for these basic
22 privileges.

23 And I'd like to share with you, if I could, a couple
24 of excerpts from some homeowners, of which we have
25 several letters that were communications between

1 departments of health, with the local departments and the
2 State.

3 And one homeowner writes that, "In October of 2000 I
4 was notified that my property would be dye-tested for
5 septic failure. In February the dye-testing occurred,
6 and on February 23rd I received a letter, saying my
7 septic was in failure, and that correction must be made
8 within ninety days or the matter would be turned over to
9 the Allen County prosecutor for legal action. I was told
10 I could not get a permit from the Department of Health
11 because I did not have enough land to put the system in.
12 Only had a half of a acre. I put the house up for sale
13 in August of 2001, and after several trips to the
14 Department of Health, asking what I should do, I was told
15 the only option was to pump and haul, and to sell my
16 property in as-is condition. I have been told that a new
17 septic system could cost as much as twenty-two thousand
18 dollars, and would probably fail within six months. I
19 must sell my house. Please give me some answers."

20 As of today, our Multiple Listing System, our local
21 database that we use to cooperate and sell homes, shows
22 this property has an expired listing, and this just
23 simply means that the homeowner was not able to sell
24 their home. And they were not offered a viable solution
25 to this date.

1 Another homeowner states that they have had these
2 communications: "We have had our home up for sale. An
3 offer was made and accepted, pending normal inspection
4 processes. Inspection showed that our septic system was
5 in failure. Thus, the buyer walked away. Our home was
6 condemned by the Allen County Department of Health. We
7 asked what we needed to do to fix the problem. We were
8 told that we should hope for a natural disaster, like a
9 fire or a tornado, to take our home. In the meantime we
10 were advised to board up the windows. Later we were told
11 we could continue to occupy the home if we would pump and
12 haul. We obviously took this alternative, and every time
13 we have the system pumped it would cost us a hundred and
14 eighty-five dollars. This was more than any other
15 utility bill we ever had, and it had to be one on a
16 regular basis. We attended numerous meetings with the
17 Allen County Sewer Board, and even contacted the Indiana
18 Department of Health. There was not help offered, and we
19 were even told that we should have thought about this
20 before we bought a home with a septic system. We had
21 purchased our home fourteen years earlier, and were
22 within the State guidelines at that time. We were so
23 upset that no-one seemed at least interested in helping
24 us; they just put restrictions on us. We could not
25 believe that our government entities could be so callous.

1 They seemed totally unconcerned, and that we may never be
2 able to sell our home, and with the cost to pump and haul
3 we may not be able to live there either."

4 And these are just typical examples of the several
5 letters that we've received from people, homeowners,
6 after some of these changes that have come about in the
7 last two years.

8 These people have lived in their homes with septic
9 systems that they believe were installed within State
10 regulations, and when they were told they were no longer
11 in compliance the government offered no available option.
12 These people have been left in bureaucratic limbo, and
13 feel abused and abandoned.

14 As a Realtor, when a homeowner calls me, asking for
15 a price opinion or to list their home and have their--and
16 they have septic system, I must tell them that the rules
17 for septic systems have changed, and could negatively
18 impact the value of their home as much as twenty-five
19 thousand dollars. The potential buyers and inspectors
20 are becoming more aware of the recent issues regarding
21 septic systems.

22 If they are currently on a pump-and-haul order or
23 have a failing or a failed system, the situation is even
24 worse. I must tell them that the odds of them being able
25 to sell their home are slim to none until a reasonable or

1 affordable solution is found.

2 Finally, we want clean water, but standards to
3 accomplish this must be reasonably achievable and not
4 cause severe impact to homeowners. Setting too high of
5 standards, that deprive people of their rights to use and
6 enjoy their homes, and that make their life's investment
7 in their homes essentially worthless, I believe is
8 unacceptable. These are not just septic systems we are
9 dealing with alone; these are just houses on land that we
10 are not dealing with--or that we are dealing with. These
11 are all families, and these are their life investments,
12 in many cases, for homeowners.

13 The recent requirements and lack of cost-effective
14 alternatives are causing many citizens' homes to become
15 worthless, and all the while they must continue to pay
16 their mortgages.

17 Protecting public health is a lofty ideal, and one
18 that we support. The Indiana Association of Realtors,
19 Fort Wayne Board of Realtors, me personally--I live on a
20 septic system--and we support these missions. However,
21 when it becomes the ultimate goal, without government
22 accountability to its past role in bringing us to where
23 we are today, or without government's willingness to find
24 viable alternatives in setting reasonably achievable
25 standards, then we must cry foul.

1 Housing has been the one bright spot in our nation's
2 economy during the past several years. In Indiana it's
3 even truer, as Indiana is a leader in home ownership
4 rates. However, Indiana also is a leader in the number
5 of foreclosures. Some of these are going to become much
6 more prevalent if these rules and regulations are put
7 into place.

8 We cannot support regulations that do not achieve a
9 balance between public health and personal property
10 rights and people's lives. Many of our citizens have
11 lost untold amounts in the recent economic collapse, and
12 we can only support regulation--we cannot only support
13 the regulations but we need to protect our life's biggest
14 investment, which is our home.

15 I just thank everyone for listening to me today, and
16 hope that we can reach some compromise in this project.

17 Thank you.

18 MS BERG: Thank you very much.

19 Bob McKean.

20 MR. McKEAN: My name is Bob McKean. That's
21 spelled M-c-K-E-A-N. And I represent the Indiana
22 Builders Association Septic Committee Council.

23 Madam Hearing Officer, I have several-- This is the
24 text of what I am going to present.

25 MS BERG: Thank you.

1 MR. McKEAN: This is a cost analysis that
2 Indiana Builders Association put together, that I don't
3 know whether it's part of the record. We'd like to have
4 that be part of the record. A fiscal impact statement.
5 And this is a group of concerns that we gave the Attorney
6 General's office about this rule. I'm going to refer to
7 those all in my text.

8 MS BERG: Thank you very much.

9 MR. McKEAN: Madam Hearing Officer, Executive
10 Board members, and other concerned citizens:

11 My name is Bob McKean. I am a member of the Indiana
12 Builders Association, an eleven-year member of the
13 Indiana Builders Association Septic Committee, a builder
14 for Howard County, Indiana for the last twenty-three
15 years, and a licensed septic installer since the
16 inception of licensing in Howard County.

17 I am here speaking to you in opposition to this
18 rule. In my eleven years of working on various drafts of
19 the Indiana Septic Code, I have been involved in numerous
20 meetings with Mr. Howard Cundiff, Mr. Allen Dunn, and Mr.
21 Chris Bork.

22 The Indiana Builders Association was a partner in
23 drafting the Indiana Septic Code, 410 IAC 6-8.1, and
24 supported its adoption. 410 IAC 6-8.1 changed the way
25 septics were installed in a very positive way,

1 incorporating science and technology into the design and
2 installation of septic systems. Today modern on-site
3 sewage disposal systems work very well, have very low
4 failure rates, and last a very long time. Mr. Cundiff
5 publicly stated that he felt that with proper operation
6 and maintenance a system could last almost indefinitely.
7 Protecting the health and safety of Indiana's residents
8 and the environment are goals that are now being
9 accomplished as of Rule 410 IAC 6-8.1. The current rule
10 is familiar, and its enforcement is within the means of
11 any health department who wishes to enforce it.

12 When consideration is given to changing a working
13 rule, we feel it is very important to be cognizant of
14 the practicality of implementing new technology,
15 equipment, and installation procedures. It is also very
16 important to be sensitive to the concept of maintaining
17 affordability in housing residents of Indiana. We do not
18 think that proposed Rule 410 IAC 6-8.2 satisfactorily
19 addresses these goals.

20 Our most serious concern about the new rule is its
21 attempt to require secondary treatment of septic effluent
22 before it enters the dispersal area. The new rule would
23 require that, in many parts of the state, the septic
24 effluent nitrate levels be reduced to ten milligrams per
25 liter before that effluent enters the dispersal area.

1 We have been told that the Indiana State Department
2 of Health is doing this to maintain compliance with EPA
3 guidelines. Yet Professor Robert Ruben, a visiting
4 scientist of the US EPA Office of Wastewater Management,
5 stated that EPA has issued no mandate that says that any
6 State has to take this approach to nitrate reduction. In
7 fact we have found no other State that has decided to
8 approach the EPA groundwater standards in this manner.

9 We have asked for evidence that directly links high
10 nitrate levels in the groundwater to septic systems. We
11 are told that there is no direct evidence. This was
12 agreed to by the Executive Board for the State Department
13 of Health.

14 We have asked if there has been a threat to the
15 public health caused by high nitrate levels in the
16 groundwater. We were told that there was anecdotal
17 evidence of a case in northern Indiana that could
18 possibly link one case of blue-baby syndrome, that
19 resulted in a death, from a failed septic system.

20 While we are sympathetic to the interests that this
21 incident incurs on one's mind, we do not feel that
22 undocumented anecdotal information about a failed,
23 nonfunctioning septic system qualifies as evidence.

24 We are concerned about the manner in which it will
25 be determined that secondary treatment will be required.

1 The proposed method for determining the need for
2 secondary treatment is to use agricultural soil maps.
3 These maps were designed to be used for the application
4 of fertilizer. When we attempted to get these maps
5 referenced in the published rule, we were told that we
6 would have to accept copies because these maps were no
7 longer in publication. We are told that eventually new
8 maps would become available, and it was expected that
9 they would be very different. In Elkhart County alone,
10 it is estimated that these changes would increase land
11 requiring secondary treatment from nineteen percent to
12 thirty-three percent. Currently, two thirds of Elkhart
13 County's buildings is in areas represented by the first
14 nineteen percent. I am sure that you can appreciate the
15 fiscal impact that increasing this area another fourteen
16 percent would have.

17 Consider also the practicality of trying to comply
18 with a rule that references nonpublished data. How do
19 you conduct business while dealing with changing, ever-
20 changing information?

21 We asked, "How effective will secondary treatment be
22 in reducing nitrate levels?" We were told that presently
23 no manufacturer would say that their system would achieve
24 the levels required by the State.

25 Secondary treatment is currently considered under

1 experimental technology. We are concerned that the
2 widespread implementation of experimental technology that
3 does not perform to the standards required by the law is
4 a formula for disaster.

5 There are only two manufacturers that can supply the
6 equipment required by this rule. Installers have very
7 little experience with the installation of this
8 equipment. This equipment requires operation and
9 maintenance. There is no operation and maintenance
10 industry in place at this time. Local health departments
11 do not have staff and do not have funding to oversee the
12 nightmare that this situation will create.

13 We are concerned about the cost of the secondary
14 treatment equipment to homeowners, and the effect that
15 this cost will have on the affordability of housing.

16 We asked the Indiana State Department of Health
17 staff for an estimate of the fiscal impact of this rule.
18 We were told the cost of implementing the entire rule
19 will be eight point seven million dollars. We prepared
20 our own analysis, and came up with a figure of nearly
21 forty-two million dollars per year. LSA has completed
22 their analysis, and are predicting the cost to the
23 residents of the state of Indiana to be as high as
24 twenty-eight point one million dollars per year.

25 In real dollars to the homeowner, the cost of one

1 secondary treatment system will add six thousand five
2 hundred dollars to eleven thousand five hundred dollars
3 to the cost of a system. The average cost of a home is
4 ninety-four thousand three hundred dollars in the state
5 of Indiana. This is an increase of seven to twelve
6 percent in the cost of a new home. It does not include
7 the cost of annual monitoring and maintenance which will
8 be required.

9 There will also be a loss of revenue within the only
10 industry that is currently performing at acceptable
11 levels in the State of Indiana. Indiana is in a state of
12 economic hardship. A March 23, 2003 article in the
13 Indianapolis Star lists twenty-five statistics that show
14 Indiana is falling behind the rest of the country in
15 terms of jobs, personal income, economic development,
16 education, and housing prices. Housing has been a
17 leading economic force while others have sagged and
18 failed. An increase such as the ones created by this
19 rule will result in fewer housing starts and a decline in
20 the value of existing homes requiring septic repair. It
21 is possible that some people may have to walk away from
22 their homes when faced with astronomically high repair
23 costs.

24 Under Indiana Code IC 13-18-17-5, the Water
25 Pollution Control Board has been empowered to adopt rules

1 through the IC 4-22-2 process, establishing groundwater
2 quality standards that includes numeric criteria, a
3 groundwater classification plan, and a method of
4 determining where the groundwater quality standards must
5 apply. The Executive Board of the Health--in our health
6 statute, IAC 16-19-3-4, is empowered to adopt reasonable
7 rules on behalf of the State Department of Health, to
8 protect and improve public health in Indiana.

9 Is this proposed rule reasonable? Should the Water
10 Pollution Control Board consider whether this is an area
11 that the standard to be mandated should apply? We think
12 this should be given careful consideration before a rule
13 so disruptive to affordable housing is made into law.

14 The IMA is concerned about the issues of nitrates
15 and any health hazard that would exist if septic systems
16 were contributing to unsafe nitrate levels. In its
17 attempt to find scientific answers to the questions that
18 exist, we asked the IBA at its last board of directors'
19 meeting to approve the expenditure of ten thousand
20 dollars to start a study by Purdue University that would
21 give us scientific answers to the questions we have been
22 asking. The IBA has agreed to do this. At this time,
23 Dr. Brad Lee and Dr. Don Jones are currently formulating
24 the groundwork for this study. Once this study is
25 complete, we will have case histories that document the

1 flow of nitrates through the soils from functioning
2 septic systems. If a problem exists, we would support
3 measures to remedy that problem. At this time we have
4 not been shown that there is a problem.

5 We are also concerned about the prescriptive content
6 of the proposed rule. We have had meetings with Indiana
7 State Department of Health staff and expressed our
8 concerns on a line-by-line basis to them. A line-by-line
9 review in preparation for meeting with Indiana State
10 Department of Health staff was conducted with the
11 assistance of soil scientists, representatives from local
12 health departments, representatives of the wastewater
13 management group, and scientists from Purdue University.
14 During these meetings it was unanimously agreed that none
15 of those present supported the draft of this rule. The
16 list that we presented to Indiana State Department of
17 Health was very similar to the list that was prepared by
18 the wastewater management committee. We applaud the work
19 that this group did.

20 There are corrections to one hundred five of the one
21 hundred and fifty pages of the rule. When we presented
22 our objections during our meeting with the Indiana State
23 Department of Health staff, we were told, "Don't worry
24 about that issue; it has already been addressed by the
25 wastewater group." However, the proposed rule as you are

1 presently viewing it and as it was published contains
2 none of our corrections. We don't know how many, if any,
3 corrections will be endorsed by Indiana State Department
4 of Health staff at this public hearing. We feel that
5 this is an abuse of the rulemaking process. Objections
6 of the magnitude presented should be remedied before
7 publication of a proposed rule.

8 We also have concerns about the legality of this
9 rule, and have given that list to the Attorney General's
10 office. Our list of concerns is eight pages long. I
11 have that list here, and I have presented it to you. Our
12 list addresses such issues as prescriptive requirements
13 that cannot be met, vague and arbitrary standards
14 determined by the Indiana State Department of Health that
15 they can change as they see fit, and numerous issues
16 concerning improper rule form.

17 However, our most serious legal concern is that the
18 Indiana State Department of Health is improperly applying
19 their authority in the way that they are treating the
20 entire denitrification process. In an opinion from
21 Barnes & Thornburg, they feel--they stated that they feel
22 the rule does. Under the authority of 327 IAC 2-11, the
23 Indiana State Department of Health does have the right to
24 establish groundwater quality standards. However,
25 according to IC 13-18-17-5, this is not just a set of

1 numbers that apply to all groundwater all the time. In
2 fact these standards must only apply at or beyond a
3 defined groundwater management zone. However, the
4 secondary treatment requirement in the proposed rule, the
5 denitrification provision, is that nitrate levels of ten
6 milligrams per liter applies as wastewater leaves the
7 secondary treatment unit, before it even enters the leach
8 field. As such, under this rule there is no groundwater
9 management zone. This is not allowed. It should be
10 reason enough for the Attorney General to reject this
11 rule as contrary to state law.

12 In conclusion, I ask that the Executive Board at
13 this time reject Rule 410 IAC 6.8-2. The rule-writing
14 process needs to be conducted by a committee of experts,
15 consisting of no less than representatives from academia,
16 soil scientists, the Indiana Builders Association, local
17 health departments, the Indiana On-Site Wastewater
18 Professionals Association, as well as Indiana State
19 Department of Health staff. This effort should be
20 conducted utilizing the services of an expert in the
21 writing of rules. Only after thoughtful study and a
22 legitimate negotiation process should a rule with this
23 much impact on the citizens of Indiana be brought forth
24 and published for adoption. The residents of the State
25 of Indiana deserve no less.

1 Thank you.

2 MS BERG: Thank you.

3 Tom Cash?

4 MR. CASH: I am Tom Cash, with Cash Concrete,
5 in Greencastle, Indiana. We manufacture concrete septic
6 tanks.

7 And I would echo the comments of Scott Hughey, who
8 spoke earlier, from Carmel Concrete. We have many of the
9 same concerns that he stated; I do have two others that I
10 would like to bring up.

11 The seals for the pipes, which I believe is stated
12 in page 42 section B, number 1, limits the pipe seals to
13 only two types of materials: That's polyisoprene and
14 natural rubber. We do not use either of these two
15 materials because most of the ones on the commercial
16 market are other compounds that we think work equally
17 well and cost less money. So we do not think that the
18 materials should be limited to only those two.

19 Likewise, the gasket for the D box that Scott spoke
20 of earlier is limited to only one type of material, a
21 closed-cell foam. We don't know why you cannot use a
22 butyl material or other less costly material to do that
23 same job.

24 This rule, if it is adopted as it is written, will
25 require most concrete tank manufacturers to buy new

1 forms, as the forms we currently have will not meet the
2 rule. What I would like to ask the Board of Health, or
3 the Department of Health: Will you give us enough lead
4 time before you implement this rule after it's been
5 accepted in its final form to get approval from you for
6 the tank designs that we have to come up with, and then
7 to purchase, have manufactured, and delivered and put
8 into use the forms before that implementation? Now
9 that's going to take quite a while. Just the approval by
10 the Department of Health usually takes quite a while, and
11 then I am sure the manufacture will take quite a few
12 months after that.

13 That's the only things that I have to say.

14 MS BERG: Thank you.

15 How about Don--

16 MR. SCHNOEBELEN: That would be good enough.

17 [Laughter.]

18 MR. SCHNOEBELEN: I understand. I've been
19 "Don" my whole life; plain old "Don".

20 My name's Don Schnoebelen, S-C-H-N-O-E-B-E-L-E-N.
21 "Just like it looks."

22 I'm here to represent the wastewater management
23 committee of the Indiana Environmental Health
24 Association.

25 I want to preface this by saying, we have been

1 working on this document for over a year, the last six
2 months on a weekly basis. We have got people from the
3 Indiana State Department of Health staff, local health
4 departments, on-site sewage system installers, builders,
5 soil scientists, drainage experts, and manufacturers, as
6 well as other groups that I could take forever to
7 mention. A lot of people have put a lot of time and
8 effort into this.

9 In late November we started meeting on a weekly
10 basis, because we felt we were under duress to come up
11 with a solution to the rule as proposed in a short period
12 of time and gee, today's the day! We set up with a goal
13 of rewriting the proposed ordinance in a form that all
14 affected parties could live with. What we'd like to do
15 at this time is submit the document that shows the
16 original rule and technical specifications with our
17 changes that have been highlighted.

18 Also we'd like the Board to realize that ISDH staff
19 had significant input and showed considerable support for
20 the changes that we're asking to be implemented in the
21 rule. Without the changes being made that we are
22 proposing, the committee would find it very difficult to
23 support the rule as it is written.

24 I will leave the comments and basically the rule,
25 tech specs in a booklet form. This one's in color, so it

1 ought to be nice and easy to see the changes.

2 MS BERG: Okay. Thank you.

3 James Keller?

4 MR. KELLER: My name's James Keller. I am the
5 government relations director for the Indiana
6 Manufactured Housing Association.

7 K-E-L-L-E-R.

8 Obviously, we're representing the manufactured
9 housing industry. The affordability questions brought up
10 by the conventional builders would be even more critical
11 to our industry, so basically I would add my seven
12 hundred members to theirs, saying, "Us, too," for all
13 practical purposes.

14 There has been a lot of work put into this rule, but
15 there are some serious problems with it. It needs to be
16 looked at, we believe, before it's adopted.

17 Two of the sections I'd like to address are section
18 8.2-2 and 8.2-4, first part of the rule, alternative
19 technology on-site systems defined.

20 One of my members recently brought a system to the
21 Department of Health that was placed in this alternative
22 technology on-site category. He also brought approvals
23 from four other state departments of health of other
24 states; he brought several years of data where these
25 systems had been operating. The Department of Health

1 agreed to allow him to install his system in the state of
2 Indiana, but only under the alternative technology.
3 There is no means in this rule, either as it's proposed
4 or as it exists, for being able to go from an alternate
5 status to an acceptable status. So no matter how long
6 this system is installed or where it's installed, it can
7 never get a full approval. That should be addressed, and
8 it is not addressed in this rule at all.

9 Also that Section 2 references Department standards
10 that don't exist. When asking, "What do we have to do to
11 get this thing finally approved," we couldn't pin it
12 down; we couldn't tell my member, "This is what you'd
13 have to do to get this system approved."

14 Section 4 is the definition of "bedroom". Now,
15 Indiana has an Indiana Residential Code that is the State
16 document that dictates how residential units are designed
17 and built in the state of Indiana. The statute gives
18 that code dictates over all other state department rules,
19 no matter what agency creates them. However, in the
20 Indiana Residential Code "sleeping room" is defined as
21 being seventy square feet and larger. This rule defines
22 that same concept as a bedroom at forty-five square feet.
23 This rule dictates how the Department of Health is going
24 to address the operation of a system. The Indiana
25 Residential Code dictates how that home is going to be

1 designed. So in theory you could design the room at
2 seventy square foot for a bedroom, have the Department of
3 Health enforce this code at forty-five square feet;
4 suddenly you've gained more bedrooms. Thus you have to
5 have a bigger septic system than what you had originally
6 designed. While the State Indiana Residential Code
7 supersedes this, it is going to create a lot of
8 confusion.

9 These are only two sections out of fifty-eight in
10 this rule. I won't take the time to go over other ones.
11 Obviously there have been a lot of people looked at this,
12 and we feel that it needs to be looked at again.

13 Thank you very much.

14 MS BERG: Thank you.

15 Edie Gray?

16 MS GRAY: Thank you.

17 My name is Edie Gray, E-D-I-E, G-R-A-Y. I am from
18 Elkhart County, from Goshen. I traveled here three and a
19 half hours today to give you a brief reason why we feel
20 very strongly, from the Elkhart County Board of Realtors
21 and the over-fifteen-thousand-member Indiana Association
22 of Realtors, whom I represent as the director, that these
23 regulations will negatively impact our state, our
24 economy, our families, and our businesses.

25 Imagine a young couple whom I serve as a Realtor--

1 I've been selling real estate in Elkhart County for
2 twenty-five years--who buys a home. Hundred thousand
3 dollar home is pretty average in our community and in our
4 state. It has three bedrooms, two baths, a two-car
5 garage, and a full basement, on a third-of-an-acre lot,
6 on a septic. They paid a hundred thousand for it, and
7 due to the wonderful financing opportunities that we have
8 today, they can buy that with three percent down. Or no
9 percent down. But let's say our family of four, a couple
10 and their two children, bought it with three percent
11 down.

12 They move in, and two years later the septic fails.
13 They now need to spend, according to our Elkhart County
14 Health Department officials, ten to fifteen thousand
15 dollars in order to put in a denitrification system and
16 make corrections to their system in order to make it
17 operative. They go to the bank. The bank says, "Well,
18 you have lived there two years. You put three percent
19 down; you now maybe have five percent equity, but if you
20 were in foreclosure it would cost us five to six percent
21 to sell it, plus costs, so basically you don't have any
22 equity. We can't lend you ten or fifteen thousand
23 dollars to put in a new septic system. Because, you see,
24 it isn't going to increase the value of the house. It
25 would if you were adding a room, but you're adding

1 something that's supposed to be working anyway. So it
2 doesn't add to the value, and we can't lend you any
3 money."

4 This couple now has no recourse: They don't have
5 the money. They're a young family; they put all the
6 money they had down to buy the house. They don't have
7 savings to come up with; they can't borrow the money, and
8 so now they're faced with a choice. They can allow the
9 bank to foreclose on them, move out, have their credit
10 ruined, rent for years because now their credit will not
11 allow them to buy another house; or they can file
12 bankruptcy. Again, their credit's ruined, their
13 reputation is ruined, they lost the house; they lost
14 their ability to own a house for one to two years,
15 minimum. And they don't feel very good about themselves,
16 and it isn't their fault.

17 That's what this denitrification system rule is
18 going to do to a family.

19 What is it going to do to Indiana? We already have
20 an economy that's not robust. We already have the
21 highest foreclosure rate of any state in the Union.
22 Isn't that an exciting statistic? We also have the
23 highest bankruptcy rate of any state in the Union, and
24 it's going to increase that. Except that's the only two
25 choices this family has at this point.

1 It's going to also cause a lot of hardships on the
2 banks and mortgage companies who hold these mortgages,
3 who are now going to lose money on those mortgages,
4 because when they go to put that property back on the
5 market with me or another Realtor or by themselves, they
6 are not going to be able to get as much money for that
7 house as they would have had they had a good, operating
8 septic system, unless they spend the money, the ten or
9 fifteen thousand to put in the new system. And then,
10 because it's an unproven system, and it comes with costs
11 of monitoring all these other things, it's going to take
12 longer to sell, if it sells.

13 If it doesn't sell, and for the length of time it
14 sits on the market, vacant, lawn not mowed, vandalism
15 invited, insurance denied--because insurers will not
16 insure a vacant property any more--the neighborhood
17 declines. This isn't good for anybody.

18 And I have not been able to find, from anyone I have
19 talked to, that spending all this money is going to do a
20 single thing scientifically proven for the health or
21 welfare of that family.

22 Indiana's fifteen-thousand-plus Realtors are asked
23 to sell you and your children--grown children--homes and
24 ask them to pay ten to fifteen thousand dollars more for
25 a new home, for unproven technology that isn't proven

1 scientifically, we are told--to do a thing for our
2 health.

3 I am very, very concerned about this. If I can't
4 sell homes on septic, I lose two very good clients that
5 represent fifteen percent of my business a year. In
6 other words, my income is immediately going to go down at
7 least fifteen percent, just from those two clients,
8 builders I represent who sell average-priced homes on
9 septic in subdivisions that are already developed.

10 Next, all these developers who've already developed
11 all this land now have lots to sell into which they have
12 costs that exceed the amount they are going to be able
13 to sell those lots for. Because Elkhart County happens
14 to have land that has soil types that require
15 denitrification systems. So if a builder has already
16 expended the money to purchase the land, develop the
17 land, put in the streets, the infrastructure, et cetera,
18 and they have cost in that land of fifteen thousand per
19 lot and they sell them for twenty, they are now worth ten
20 or maybe five, because now they're going to require
21 denitrification systems.

22 Why will the value of the land go down? Because
23 buyers have choices: They can buy a lot in a subdivision
24 that requires a septic and a denitrification system, or
25 they can buy a lot in a different soil-type location that

1 doesn't require it, and the cost of their home will not
2 be increased by ten to fifteen thousand dollars. So, if
3 they like this location but they have to buy in that
4 location in order to avoid spending an additional fifteen
5 thousand or ten thousand dollars for a septic system,
6 what would you choose? I mean, you have to like that
7 location a lot to spend spent fifty to seventy-five
8 percent more for that home--or for the land on which to
9 put that home. So they won't do it, obviously, so
10 therefore the land that already exists, that's already
11 developed, is going to be devalued.

12 The homes that already exist on septic, once it
13 becomes public knowledge, are also going to be devalued,
14 because people will be not as likely to buy a home on
15 septic.

16 It's going to have a huge financial impact on your
17 economy. It's going to put builders out of business,
18 septic installers out of business; it's going to cause a
19 negative impact on banks; it's going to increase the cost
20 of home ownership; it's going require a burdensome
21 expense, without scientific proof that such a system
22 would improve the water quality or health of the families
23 paying for them. It will devalue existing homes,
24 increase unemployment, increase Indiana's foreclosure
25 rate, be devastating to the economy and the economic

1 health of the family, and be devastating to the viability
2 of businesses dependent upon the housing industry,
3 including banks and mortgage companies, builders, and
4 tradesmen. It will increase bankruptcy rates; it will
5 decrease home ownership rates; and it will cause a
6 decline in neighborhoods.

7 I respectfully request that people in the Department
8 of Health of Indiana please reconsider these rules, and
9 take a look at the cost benefits to these rules before
10 implementing or passing them.

11 Thank you very much.

12 MS BERG: Thank you.

13 I don't have a piece of paper for anyone else that
14 had requested to speak, but is there someone else who
15 would like to speak at the hearing today?

16 People who did-- Oh, please come up.

17 Would you repeat your name?

18 MS PEDTKE: Again, my name is Marlys Pedtke,
19 M-A-R-L-Y-S P-E-D-T-K-E. I represent the Indiana
20 Builders Association today.

21 I would like to provide for you, for the record, a
22 paper that we have created regarding costs, along with
23 the Realtors Association of Indiana.

24 And I would also like to provide the Executive Board
25 of the Indiana State Department of Health my opinion

1 of--my appreciation of personal rapport and relationship
2 in dealing with the staff that wrote this rule, actually.
3 I can talk to you and them for a very, very long time
4 about a lot of things that are wrong with this rule, but
5 I do appreciate the fact that the rapport and the
6 relationship with that staff has always been a
7 professional one, and was always a communicative one. So
8 I'd like the Executive Board to know that.

9 Thank you.

10 MS BERG: Is there anyone else at all who
11 would like to speak today?

12 Okay, I will remind you that you may submit written
13 comments up through August 13, I believe--yes, August
14 13--and remind you that there are two other public
15 hearings, one in the northern part of the state and one
16 in the southern part of the State.

17 Anyone who wishes to be just listed as appearing at
18 the hearing today, please make sure that you've filled
19 out one of these slips of paper and provide it to me
20 before you leave.

21 Also, there are staff members of the Board of Health
22 here present who have worked on these rules, and I think
23 they're around the back of the room. If any of you would
24 wish to talk to them, they are available.

25 If there's no-one else who cares to be heard at this

1 time, I want to thank each of you for your presentations.

2 And my report of the hearing will be in writing to
3 the Executive Board of the Indiana State Department of
4 Health, for their consideration before final adoption.

5 These proceedings pursuant to notice are hereby
6 concluded. This cause is therefore adjourned until
7 further order of the Executive Board.

8 Thank you all for coming.

9 [The hearing was concluded at 2:07 p.m.]

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